

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of Michael Arthur Ekdahl and
Penny Evelyn Ekdahl, individually and
d/b/a Mike's Lawn Service

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

The above-entitled matter came on for a prehearing conference before Administrative Law Judge Kathleen D. Sheehy on May 17, 2006, at 1:30 p.m. at the Office of Administrative Hearings in Minneapolis, Minnesota. The record closed at the conclusion of the prehearing conference.

Christopher M. Kaisershot, Assistant Attorney General, Suite 1200, 445 Minnesota Street, St. Paul, MN 55101-2130, appeared for the Department of Labor and Industry (the Department).

Michael Ekdahl, 934 Wakefield Avenue East, St. Paul, MN 55106 (Respondent), did not appear. Penny Ekdahl did not appear by agreement with the Department because she had previously signed a Consent Order resolving this matter.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of the Department of Labor and Industry will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Nancy Leppink, Director of Legal Services, Minnesota Department of Labor and Industry, 443 Lafayette Road, St. Paul, MN 55155, to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

STATEMENT OF ISSUES

The issues presented in this case are whether Respondent Michael Ekdahl is subject to discipline and/or civil penalties because:

(1) Respondent engaged in unlicensed residential building contractor activity and/or roofer activities, in violation of Minn. Stat. §§ 326.84, subds. 1 and 1b, 326.842, and 326.91, subds. 1(5) and 4 (2004); and

(2) Respondent failed to perform the work he contracted to perform and for which he was paid, thereby performing in breach of contract in violation of Minn. Stat. § 326.91, subds. 1(4) and 4 (2004).

Based on the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On April 11, 2006, the Commissioner of Commerce issued a Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges (Notice and Order for Hearing) in this matter. The Department served the Notice and Order for Hearing on Michael Ekdahl and Penny Ekdahl by first-class mail that day, at 934 Wakefield Avenue East, St. Paul, MN 55106.

2. The Prehearing Conference was scheduled to take place at 1:30 p.m. on May 17, 2006, at the Office of Administrative Hearings.

3. The Notice and Order for Hearing contained the following language:

Respondents' failure to appear at the prehearing conference may result in a finding that Respondents are in default, that the Department's allegations contained in the Statement of Charges may be accepted as true, and that its proposed disciplinary action may be upheld.

4. The Notice and Order for Hearing also provided that if any party had good cause for requesting a delay of the prehearing conference, the request must be made in writing to the Administrative Law Judge at least five days before the prehearing conference, and a copy of the request must be served on the other party.

5. Prior to the prehearing conference, the Department reached an agreement to resolve this matter with Penny Ekdahl, in the form of a Consent Order signed by Ms. Ekdahl.

6. On May 17, 2006, Michael Ekdahl left a telephone message with counsel for the Department indicating that he had a conflict with the time and needed a

continuance. Mr. Ekdahl did not contact the Administrative Law Judge, either in writing or by telephone, to request a continuance of the prehearing conference.

7. The Respondent failed to appear for the prehearing conference on May 17, 2006. Because the Respondent failed to contact the Administrative Law Judge to request a continuance in this matter, he is in default.

8. Pursuant to Minn. R. 1400.6000, the allegations contained in the Statement of Charges at paragraphs 1-7 are hereby taken as true and incorporated into these Findings of Fact.

9. Based on the agreement reached with Penny Ekdahl, the Department requested that this matter be dismissed with regard to her. The Department requested a default recommendation with regard to Michael Ekdahl.

Based on the Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Labor and Industry have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, 45.027, 326.91, subd. 4, and 326.92, subd. 3.

2. The Notice and Order for Hearing issued by the Department was proper, and the Department has fulfilled all relevant procedural requirements of law and rule.

3. The Respondent is in default. Pursuant to Minn. R. 1400.6000, the allegations contained in the Statement of Charges at paragraphs 1-7 are hereby taken as true.

4. Minn. Stat. § 326.84, subds. 1 and 1b, require that residential building contractors be licensed. Minn. Stat. § 326.842 requires that roofers be licensed. By contracting to perform roofing activity without being licensed to perform this work, Respondent Michael Ekdahl is subject to discipline under Minn. Stat. § 326.91, subds. 1(5) and 4.

5. By failing to perform the roofing work he contracted for and for which he was paid, Respondent Michael Ekdahl performed in breach of contract in violation of Minn. Stat. § 326.91, subds. 1(4) and 4.

6. The imposition of discipline and/or civil penalties against Respondent Michael Ekdahl is in the public interest.

Based on the above Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that:

- (1) the Commissioner of Labor and Industry take disciplinary action and assess appropriate civil penalties against Respondent Michael Ekdahl; and
- (2) the Commissioner dismiss this matter against Respondent Penny Ekdahl.

Dated this 19th day of May, 2006.

s/Kathleen D. Sheehy
KATHLEEN D. SHEEHY
Administrative Law Judge

Reported: Default

NOTICE

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.